



THE COUNCIL OF ORGANIZATIONAL REPRESENTATIVES
ON NATIONAL ISSUES CONCERNING PEOPLE WHO ARE DEAF OR HARD OF HEARING

DOCKET FILE COPY ORIGINAL

March 31, 1997

Mr. William F. Caton
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

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MAR 28 1997
Federal Communications Commission
Office of Secretary

Re: Reply Comments in the Matter of Closed Captioning and
Video Description of Video Programming,
MM Docket No. 95-176

Dear Mr. Caton:

Enclosed please find an electronic disk plus an original and six copies of the Reply
Comments of the Council of Organizational Representatives on National Issues Concerning
People who are Deaf or Hard of Hearing, in the above referenced proceeding.

Sincerely,

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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MAR 28 1997

Federal Communications Commission
General Secretary

In the Matter of)
)
Closed Captioning and Video)
Description of Video Programming)
) MM Docket No. 95 -176
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

REPLY COMMENTS OF

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ON NATIONAL ISSUES CONCERNING
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SUMMARY

COR agrees with other parties to this proceeding that an eight to ten year phase-in schedule for the captioning requirements is too long, given the great desire for access to video programming by 28 million deaf and hard of hearing Americans, and Congressional intent on this point. We propose instead, that the FCC use a three to four year timetable to allow industry to fully implement the new requirements. In addition, because the demand for access to news, public affairs, and children's programming is so great, we propose that these types of programs be captioned earlier in the phase-in period. With respect to library programming, we oppose an overall exemption of 25%, and propose instead a rule that requires captioning for 100% of library programming exhibited to the public, over a seven year phase-in period. Previously captioned programs should be exhibited with captions, even where a provider has otherwise met these captioning schedules.

COR applauds the FCC's proposed decision to reject blanket exemptions for music, weather, sports, home shopping, and leased access programming. We oppose blanket exemptions for foreign language, cable access, and instructional programming. We also oppose exemptions for commercial, political, and promotional advertisements, as the information contained in these advertisements is critical for consumers making choices about products and services, candidates, and upcoming programming.

COR urges the Commission to adopt minimum standards for the non-technical aspects of captioning quality so that closed captions can accurately reflect the audio

portion of the video programming on which they are included. Such guidelines should ensure that mistakes in spelling, timing, and placement are kept to a bare minimum, and should require captions to contain all elements of the soundtrack, including sound effects, speaker identification, and audience reaction. Additionally, within one to two years minimum standards for the captioning of live programming should be in place so that businesses will have the incentive to train their stenocaptioners to meet those high standards. Real-time captioning, as opposed to electronic newsroom captioning, should be the standard required for all live news programming.

COR agrees with other parties that the creation of a council to whom captioning complaints could be brought would facilitate the resolution of captioning grievances. For this reason, and because the council could also serve as a clearinghouse for information on frequent captioning problems and new captioning technologies, we urge the Commission to create such a council.

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**THE COUNCIL OF ORGANIZATIONAL REPRESENTATIVES
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I. Introduction

The Council of Organizational Representatives on National Issues Concerning People who are Deaf or Hard of Hearing (COR) submits these reply comments in response to the Federal Communication Commission's (FCC or Commission) Notice of Proposed Rulemaking (NPRM) on closed captioning of video programming (released Jan. 17, 1997).

COR is a coalition of national organizations that are committed to improving the lives of individuals who are deaf or hard of hearing. Constituencies of COR organizations provide a variety of services, including technological and telecommunications services, educational programs, social and rehabilitation services, support groups and self-help programs, and general

information on other services for deaf and hard of hearing consumers. Among other things, COR serves as a bridge among interested organizations, the general public, and the community of people with disabilities on matters concerning deaf and hard of hearing individuals.¹

II. Closed Captioning Transition Schedules

A. New Programming

We agree with those parties commenting to this proceeding who stated that the FCC's proposed transition schedule of eight to ten years for non-exempt new programming is too long. Not only is this inconsistent with the intent of Congress to make television accessible for deaf and hard of hearing individuals in a timely fashion, it is simply unnecessary given the widespread availability of closed captioners, and given the technologies available to facilitate a more rapid implementation schedule. A shorter phase-in period, such as three to four years, would be enough time for the video programming industry to fully implement the caption requirements for new programming. The desire for access to video programming is staggering. Having been denied such access for the past 40+ years, deaf and hard of hearing individuals do not wish to see another decade go by before they can enjoy this access. Moreover, current proposals by Congress threaten to cut back on existing captioning appropriations for certain types of video programming. These cutbacks are being proposed with the incorrect perception that Section 713 will fill any gaps in captioning access. Were the FCC to delay implementation of Section 713 in

¹ The following members of COR support these comments: Alexander Graham Bell Association, American Academy of Audiology, American Academy of Otolaryngology - Head & Neck Surgery, American Society for Deaf Children, American Speech-Language-Hearing Association, WGBH-The Caption Center, Convention of American Instructors of the Deaf, League for the Hard of Hearing, National Association of the Deaf, Registry of Interpreters for the Deaf, Self Help for Hard of Hearing People, Inc., and Telecommunications for the Deaf, Inc.

the manner proposed in the NPRM, there would be a significant period of time during which caption viewers might lose access to programming that now have captions.

The FCC's transition schedule proposes an increase in the percentage of programming that must be captioned every two or three years. COR agrees with other commenters to this proceeding that any FCC schedule prescribing percentages should make clear that such percentages must be over and above the percentage of programming that is already captioned on any given channel. In other words, if 25% of the programming on a channel must be captioned in the first two years, and 50% of the programs on that channel are already captioned, the provider of that channel would be expected to caption 75% of all of such programming in the first two years that the FCC rules go into effect. Were this not the case, programmers who are already meeting or exceeding the FCC's minimum percentages would not have any incentive to increase the number of their captioned programs for quite some time, and might even be tempted to roll back the amount of captioning they provide to bring it down to the mandated percentages.

In response to both the FCC's Notice of Inquiry (NOI) and its NPRM, the Commission has received numerous comments about the high demand for access to news, public affairs, and children's programming above other categories of programming. Because these types of programs are especially important to deaf and hard of hearing communities, the transition schedule devised by the FCC should ensure that such programming is captioned earlier in the phase-in period.

B. Library Programming

Library programming is defined in the NPRM as programming that was first published or exhibited prior to the effective date of its captioning regulations. We agree with other parties to

this proceeding that an FCC rule that would only require 75% of all library programming to be captioned fails to follow Congressional intent to maximize access to this type of video programming.

The distinction between new and library programming drawn by Congress in Section 713 was intended to reflect Congress' understanding that it would be burdensome to require captioning for significant volumes of programs which are merely sitting on closet shelves, and which might never be exhibited to the public. Congress never intended to exclude as much as 25% of all programming which would be exhibited from the captioning requirements. Many old programs offer a valuable depiction of a time in America when deaf and hard of hearing people had no access whatsoever to video programming. Certainly, Congress did not intend to bar access to these programs forever. Rather, in order to protect against requirements which would be too burdensome, Congress carved out specific criteria by which providers can seek exemptions under Section 713. Indeed, the requirement of Section 713(b)(2) to "maximize" library programming is a requirement which, under the law, can only be waived in the very specific situations where captioning is economically or unduly burdensome, or where captioning would be inconsistent with contractual obligations.

We oppose a rule that exempts 25% of library programming from the captioning requirements, and propose instead a rule that requires captioning for 100% of library programming exhibited to the public, over a seven year phase-in period.

C. Previously Captioned Programming

When a video provider exhibits programming that has already been captioned, it should be required to transmit such programming with those captions, regardless of whether the provider

has met the FCC's percentages as contained in the transition schedule, and regardless of whether the program has been edited. All too often, programs previously captioned on home video or on a broadcast network are re-exhibited without those captions due to simple neglect about the existence of a captioned version, misplacement of the captioned master, or as a result of edits made so that the program can fit new time slots. The cost of reformatting captions when editing has taken place is so small, and will likely drop with the advent of new technologies. In contrast, the benefits to caption viewers who seek access to these captioned programs is great, justifying the minimal expense necessary to re-exhibit the programs with captions.

III. Classes of Video Programming

COR applauds the FCC in its decision to reject blanket exemptions for music programming², weather programming, sports, home shopping programming, and leased access channels. We also support the FCC's decision not to exempt whole classes of video providers, based on the FCC's explanation that all classes have the capability to deliver closed captions. However, we oppose blanket captioning exemptions for foreign language programming,³ cable access programming, instructional programming, and commercial, political and promotional advertisements. In responses to the FCC's NOI on captioning, a number of parties had submitted

² In addition to music videos, COR supports requirements for captioning for live performances and theme songs which accompany television series.

³ COR understands that, for the time being, technological restrictions only make possible captioning on foreign language programs that use Latin based alphabets. However, if future technologies make captioning for other languages (e.g. Chinese) possible, there should not be any automatic exemption for this type of programming. Individuals who are both deaf or hard of hearing and primarily use a foreign language face two barriers to communications access. Breaking down at least one of these barriers through captioning will go a long way toward providing valuable information access to such individuals.

comments reporting on the great number of Americans that will benefit from the FCC's closed captioning rules. Because these numbers are so high, and the relative cost of captioning, when compared to overall production costs, are so low, the FCC should very narrowly construe categorical exemptions from the captioning requirements. Moreover, competition in the captioning industry is increasing at a rapid pace, bringing down the costs of inserting captions to an all time low. And new, inexpensive, do-it-yourself captioning equipment can enable even low budget operations to provide their own captioning. As these costs come down, it becomes increasingly difficult to justify broad programming waivers based on economic burden.

Alternative funding mechanisms for certain types of programming can also help defray captioning costs for programmers with minimal budgets. For example, although public, educational, and governmental (PEG) access programming operates on low budgets, many of the entities which exhibit such programming are already required to provide access to their program content under Titles II and III of the Americans with Disabilities Act. This holds true for instructional programming as well.⁴ Where computer-assisted transcription services are used to provide such access, the captions created by these services could be used for television transmissions. Another method of funding PEG and other low budget, public interest programming is to add a few cents per month to the bills of cable subscribers, as is done in Fremont, California to fund live captioning of school board and city council meetings.

⁴ Additionally, the FCC should not assume that all televised instructional courses do not have the budgets to withstand captioning costs. As the FCC notes, many of these televised courses are pre-recorded and distributed nationally. The costs of inserting captions into such programming should be considered just another part of its production costs.

Governmental and instructional programming frequently contains information that is of dire importance to deaf and hard of hearing individuals, whether to earn a college diploma, or to stay informed about issues discussed at a community hearing. Because there are inexpensive and simple methods by which access to this programming can be achieved, we oppose exemptions for this type of programming.

There are various types of advertising - political, promotional, and commercial - for which the FCC is considering captioning exemptions. Advertisements in each of these categories provide critical information needed by the twenty-eight million deaf and hard of hearing individuals living in America. For example, information about political candidates is critical for individuals to intelligently exercise their franchise. Similarly, advertisements which promote upcoming television programs enable viewers to make informed choices in their television viewing. And commercial advertisements provide important information in making choices about the purchase of consumer products and services.

The Telecommunications Act allows exemptions for programming offered in each of these advertising categories only where video programming providers can demonstrate, on a case-by-case basis, that providing captions would result in an economic or undue burden. Yet, the cost of captioning is insignificant compared to the cost of air time; candidates and businesses who can afford advertisements on television can certainly afford the fractional costs of captioning. Moreover, the benefits to be gained by captioning - both for individuals who are deaf or hard of hearing, and for the advertisers themselves (who stand to gain more patrons and supporters) - far

outweigh the insignificant costs of inserting captions.⁵ Where a captioning waiver is granted for economic burden, we support a rule that would require the relevant portions of the advertised information to be displayed in a textual or graphic form.

IV. Undue Burden Exemptions

Under Section 713(d)(3), video providers and owners may petition the FCC for an exemption from the captioning requirements where they can demonstrate that captioning would impose an undue burden. COR submits that such exemptions should be narrowly construed, and be granted, as the Act directs, only where the provision of captions would result in “significant difficulty or expense.” We agree with parties commenting in this proceeding who have rejected the size of the market, degree of program distribution, and audience ratings or share as permissible factors in making an undue burden determination. Insofar as the undue burden provision of Section 713 was patterned after the undue burden provisions of the ADA, the FCC must restrict undue burden determinations to a comparison of captioning costs with the resources and type of the programming provider or owner charged with providing such captioning. When the overall revenues of a provider or owner are great enough to withstand the costs of inserting captions on a particular program, Section 713(d)(3) directs the FCC to deny a petition for an undue burden exemption, even if the production budget, revenues, or audience size for that program is small.

⁵ The cost of hiring an in-house captioner to caption interstitials and promotional advertisements that have a fast turn-around time should not be a burden for national program providers and owners. Only local community programmers who can prove economic or undue burden should be granted waivers from the requirement to caption these advertisements.

We agree with the FCC that the Commission should apply a waiver type procedure for undue burden exemptions, which would permit public notice and comment for each petition submitted. Just as the ADA applies its undue burden standard on a case-by-case, so too, should the Commission look at each petition separately, and where necessary, craft limited waivers based on the specific facts before it. Unlike the economically burdensome exemption of Section 713(d)(1) - which permits exemptions through the rulemaking process - Congress made clear that the undue burden exemptions under Section 713(d)(3) are to be granted on a case-by-case basis. Moreover, because the costs and technologies associated with captioning, as well as the resources of any given provider or owner, will change over time, the exemptions under this subsection should be restricted to a one year period.

V. Minimum Standards of Captioning Quality

We applaud the FCC's decision to require all program providers, regardless of their distribution technology, to be responsible for monitoring their video equipment and signals to ensure the accurate transmission of captions from the program's origination site all the way to the consumer. This will hopefully reduce a significant number of engineering errors that have resulted from failing to readjust settings after the use of digital video effects (e.g., "squeezing the picture") or placing caption data on the incorrect line or field.

In addition to these technical standards of quality, however, COR strongly urges the Commission to adopt minimum standards for the non-technical aspects of captioning quality. The Commission itself has acknowledged that "[u]nless closed captions accurately reflect the audio portion of the video programming to which they are attached, they may be of limited use to the viewer." In the Matter of Closed Captioning and Video Description of Video Programming,

Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report, MM Dkt. No. 95-176 at ¶87 (Report). It is critical, therefore, for the Commission to provide guidelines which will prevent the proliferation of low quality services that would violate the intent of Section 713. Such guidelines should ensure full accessibility and usability of captions for viewers, so that mistakes in spelling, timing, and placement are kept to a bare minimum. As the Commission has noted, the goal of captioning is to provide information which is "substantially equivalent to . . . the audio portion of a video program." Accordingly, Commission guidelines should also include a requirement that captions contain all elements of the soundtrack necessary for accessibility, including, but not limited to, verbal dialogue, speaker identification, audience reaction, sound effects, and background noise. Moreover, the FCC should ensure that where open character generated announcements, such as emergency warnings, names of speakers, and weather advisories are provided, such announcements not obstruct or be obstructed by closed captions.

Similarly, it would be a mistake for the Commission to accept only "adequate, but not high quality captions" for live captioning for an unlimited period of time. Only if high standards of captioning are set to take effect at a date certain will captioning agencies have the incentive to train their stenocaptioners to meet those high standards. If these standards are not in place, then an inferior quality of live captioning will become the norm for the foreseeable future. Toward this end, we support those commenters to this proceeding who suggested an interim period of approximately one to two years after the implementation of the captioning rules for acceptable captioning, after which time the higher standards would go into effect. During this one to two year period, captioning agencies would have time to "adjust" to the new captioning environment.

Finally, the FCC's guidelines on the non-technical standards of quality should include a requirement that real-time captioning, and not electronic newsroom captioning (ENR), be used for live newscasts. Several commenters to this proceeding reported on the various problems with ENR, noting its failure to capture newscaster banter, on-street reporting, and late-breaking news. The failure to capture such significant portions of news programming puts into serious question whether ENR can fulfill Congress' intent for news programming to be "fully accessible" to deaf and hard of hearing individuals. With respect to the FCC's concern that there may not be a sufficient number of stenocaptioners to handle the demand for real-time captioning, we again suggest a delayed implementation date for the real-time captioning requirement. Because generally, the course of study to become a real-time captioner lasts no more than two years, a two year lag time should be sufficient to allow the training needed to meet the demand for real-time captioning.

As the FCC notes, there are a number of other issues that concern captioning quality, including accuracy of transcription, punctuation, placement, identification of nonverbal sounds, pop-on or roll-up style, verbatim or edited for reading speed, and type font. The FCC expresses a reluctance to specify guidelines on these matters, out of a concern for the availability and costs of captioning services and the difficulty of developing such guidelines. As do other commenters in this proceeding, COR feels strongly that within a period of two years, the captioning environment will have developed to a point where the promulgation of these more specific standards will not only be appropriate, but necessary. Accordingly, we urge the Commission to re-open this

proceeding for the purpose of developing guidelines on these more precise captioning issues within two years after the present captioning rules go into effect.⁶

VI. Enforcement

The FCC has proposed to verify compliance by requiring video programming providers to maintain records on the amount of captioning they provide. We support such a mandate and propose that such records either be housed with the FCC or with the council proposed below.

Along with other commenters to this proceeding, COR is concerned about the Commission's proposal to require consumers to first notify and receive a response from video programming providers before being able to file a complaint with the FCC against a video provider. Specifically, we are concerned about the difficulties consumers will have in contacting providers, including not knowing which provider to contact, difficulty in ascertaining the provider's correct address or telephone number, and not having direct access to the provider via TTY or an Email address. Any enforcement procedure which stays a Commission complaint pending a response from a provider should (1) require providers to thoroughly publicize information about their points of contact, (2) set forth what will constitute a good faith response by the provider, and (3) establish a time by which the provider will be required to respond to the consumer.⁷

⁶ As noted by others, by this time, twenty-five to fifty percent of all new programming would be captioned, and would provide sufficient experience to more clearly define quality standards.

⁷ Our concerns arise from previous experience in trying to resolve captioning problems with providers in the past. Even when consumers made contact with the proper provider in the past, little effort was made by those providers to rectify the captioning problems brought to their attention.

We also agree with those parties commenting to this proceeding who suggested the creation of a council to whom captioning complaints could be brought. A council, with balanced representation from consumers, the video industry, and perhaps the FCC, could serve as a single point to which a consumer could turn with a grievance about a provider's captioning. The council would endeavor to resolve the complaint, and maintain contact with both the provider and the consumer on the matter at hand. The council could also serve as a clearinghouse for the receipt of information about common captioning problems and new technological innovations.

VII. Conclusion

COR wishes to thank the Commission for its work on ensuring full access to video programming for deaf and hard of hearing Americans, and for the opportunity to submit these comments.

Respectfully submitted,



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